HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 6A (S/S) 2003
(Old No. 292 (S/S) 1998)

Dinesh Chandra Joshi S/o Sri Tara Dutt Joshi,
R/o village Silauli,
Post Office & Distt. Pithoragarh. ----Petitioner.

Vs.

1. State of U.P. through Secretary,
   Yuwa Kalyan Department,
   U.P. Civil Secretriat, Lucknow,
2. The Director General,
   P.R.D./P.V.D. Evam Yuwa Kalyan,
   U.P. Lucknow.. ----Respondents.

Sri Rajendra Dobhal, learned counsel for the petitioner.
Learned Standing Counsel for the State.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has challenged the order dated 18.12.1997 passed by the Director General, Prantiya Rakshak Dal/Prantiya Vikas Dal & Director, Youth Welfare, U.P. Lucknow, rejecting the representation of the petitioner.

The facts, in brief, are that the petitioner was initially engaged as Typist on daily wage basis vide order dated 19.10.1992 passed by District Youth Welfare Evam Vikas Dal Adhikari, Pithoragarh. After serving the Department for about 5 years, the petitioner filed writ petition no. 6491(ss)1997 with a prayer to issue a writ, order or direction in the nature of mandamus directing the opposite party to grant the petitioner regular scale of pay of Rs. 950-1500 which is applicable to the

Class-III post, against which he has been working as daily wager since October 1992 and further prayed to issue a writ directing to the respondents to regularise petitioner's services on the post of Typist.

The Allahabad High Court on 21.11.1997 passed order which reads as under:-

"....If the petitioner is eligible, his case be considered for the payment of salary in the minimum of pay-scale of Rs. 950-1500."

The Director General, while deciding the representation of the petitioner, rejected his claim for regularisation vis-à-vis payment of regular pay-scale and stated that since there was no post of Typist in existence in the office of Youth Welfare Officer and further, since the appointing authority of Class-III employees is the Director, therefore' the Youth Welfare Officer has wrongly engaged the petitioner on the post of Typist on daily wage basis.

After the representation was rejected, the petitioner was not permitted by the Department to work as Typist on daily wage basis in the Department w.e.f. 08.01.1998. Aggrieved by the oral termination order restricting the petitioner working as Typist in the Department, the petitioner filed another writ petition no. 292(ss)1998 before the Allahabad High Court which has been renumbered as writ petition no. 6A(ss)2001 in this High Court, after it was received by transfer from Allahabad High Court.

So far the earlier writ petition no. 6491(ss)1997 is concerned, that has already been dismissed as infructuous by this Court as in that writ petition, the prayer was for regularisation of the services of the petitioner and after the writ petition was filed, the services of the petitioner were

terminated, the termination order has been challenged by means of the present writ petition.

The petitioner has submitted that he is working with the Department for about 5 years as a daily wager. An experience certificate was also issued to the petitioner by the District Youth Welfare and Pradeshik Vikas Dal Adhikari, Pithoragarh on 02.11.1995. The District Youth Welfare Officer has also recommended the case of the petitioner for regular appointment, however the Director General has rejected the claim of the petitioner.

The respondents have filed counter affidavit. Learned Standing Counsel has submitted that the petitioner was engaged on daily wage basis by the District Youth Welfare Officer who is not competent authority to appoint Class-III employee in the Department as the appointing authority is the Director General, Youth Welfare. It has been further contended that the petitioner was engaged on daily wage basis, though there was no vacancy in the Department. Since the petitioner had worked on daily wage basis inspite of no vacancy with the Department and further the District Youth Welfare Officer was not the appointing authority, the engagement of the petitioner as Typist was wholly without authority.

In the circumstances, the petitioner cannot claim any benefit of the work done by him as daily wager in the Department as a matter of right. The practice of back-door entry has also been deprecated by the Hon'ble Supreme Court. Learned counsel for the petitioner has submitted that the Department has issued a seniority list in which the name of the petitioner finds place at serial no. 41. The Department has already engaged a number of persons from the seniority list but the petitioner has been deprived of being appointed. Annexure no. 3 is the list of 43 persons who were engaged on daily wage

basis. Learned counsel for the petitioner has further submitted that some of the persons from the list have already been engaged on regular basis by the Department. It is not the case of the petitioner that junior to the petitioner have been engaged on regular basis.

Since, the petitioner was engaged by the authority who was not competent to engage Class-III employees and further since there was no vacancy against which the petitioner could have been engaged, I do not find any infirmity in the order passed by the Director, Youth Welfare dated 18.12.1997.

Learned Counsel for the petitioner has submitted that the petitioner, who has served the Department for more than 5 years, has now become overage and he cannot apply for Govt. job.

Since the petitioner has worked with the Department for more than 5 years, in case there falls vacancy in the Department in future, the petitioner's case may be considered by the authority concerned sympathetically keeping view that the petitioner has already worked with the Department for 5 years.

With this observation, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

August 29, 2005:
NMC: